

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 804 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAJNIBHAI VALLABHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Surat City, Surat passed an order on November 9, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) detaining Rajnibhai Vallabhbhai Patel, under the provisions of the

PASA Act.

#. The detaining authority, in the grounds of detention took into consideration one offence registered against the detenu and statements of two anonymous witnesses in respect of the incidents dated September 26, 1999 and October 19, 1999. The petitioner came to be branded as "bootlegger" and the authority was satisfied that his activities are detrimental to public order. The authority found that resorting to less drastic remedy is not possible as the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities. The authority also exercised powers under section 9(2) of the PASA Act of not disclosing the identity of the witnesses.

#. The petitioner challenges the order of detention on various grounds. However, Mr. Prajapati, learned advocate appearing for the petitioner has restricted his arguments only to the aspect of delay in forwarding representation made by the detenu to the detaining authority. He submitted that the representation on behalf of the detenu was made to the detaining authority on February 4, 2000. The said representation was received by the detaining authority on 7th February, 2000 and the authority forwarded the same to the government on 13th February, 2000 as the order of detention was already approved by the government and the detaining authority had become functus officio. Drawing attention of this Court to Annexure : D - a communication received from the detaining authority, Mr. Prajapati submitted that the detaining authority states that the representation was received on February 8, 2000 whereas the postal acknowledgment slip, Annexure :E indicates that it was received by the office of the detaining authority on February 7, 2000. In any case, according to Mr. Prajapati, there was delay of 5 to 6 days in forwarding the representation. This would vitiate the continued detention of the detenu as the right of the detenu of making an effective representation stands infringed. He therefore, urged that the petition may be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, there is no dispute about the fact that the representation dated February 4, 2000 was sent to the detaining authority on behalf of the detenu and the postal acknowledgment slip indicates that it was received by the office of the detaining authority on February 7, 2000. However,

according to the detaining authority, it was received by him on 8th February, 2000 (Annexure :D). Assuming that it is received by the detaining authority on 8th February, 2000, then also, the detaining authority has forwarded the same to the government on 13th February, 2000 i.e. after 4 clear days. Admittedly, on the day on which the representation was received, the detaining authority had become functus officio as the order of detention was already approved by the State Government. Nothing more was required to be done and therefore, lapse of 4 days in forwarding the representation can be said to have affected the right of the detenu of making an effective representation. The continued detention therefore, would be rendered bad in law. No attempt is made on the part of the detaining authority to explain this delay nor any affidavit is filed. Under the circumstances, the petition is required to be allowed on the ground of delay in forwarding the representation.

#. The petition is allowed. The impugned order of detention dated November 9, 1999 is hereby quashed and set aside. The detenu - Rajnibhai Vallabhbhai Patel is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-